

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

**FILED**

JUN - 9 2008

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY *[Signature]* DEPUTY CLERK

MAVERICK RECORDING COMPANY, a§  
California joint venture; UMG RECORDINGS,§  
INC., a Delaware corporation; ARISTA§  
RECORDS LLC, a Delaware limited liability§  
company; WARNER BROS. RECORDS INC.,§  
a Delaware corporation; and SONY BMG§  
MUSIC ENTERTAINMENT, a Delaware§  
general partnership,§

Plaintiffs,§

vs. §

WHITNEY HARPER, §

Defendant. §

CIVIL ACTION NO. SA-07-0026-XR

**PLAINTIFFS' SECOND AMENDED COMPLAINT  
FOR COPYRIGHT INFRINGEMENT**

Plaintiffs, by their attorneys, complain of the Defendant, and would show:

**JURISDICTION AND VENUE**

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. §101 et seq.).
2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. §1331 (federal question); and 28 U.S.C. §1338(a) (copyright).
3. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that the Defendant resides in this District, and the acts of infringement complained of herein occurred in this District.

## **PARTIES**

4. Plaintiff Maverick Recording Company is a joint venture between SR/MDM Venture Inc. and Maverick Records LLC, organized and existing under the laws of the State of California, with its principal place of business in the State of California.

5. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

6. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

7. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

8. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

9. Plaintiffs are informed and believe that Defendant is an individual residing in this District.

## **COUNT I INFRINGEMENT OF COPYRIGHTS**

10. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

11. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright with respect to certain copyrighted sound recordings (the "Copyrighted Recordings"). The Copyrighted Recordings include but are

not limited to each of the copyrighted sound recordings identified in Exhibit A, Schedule 1, and Exhibit C attached hereto, each of which is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights. In addition to the sound recordings listed on Exhibit A, Schedule 1, and Exhibit C, the Copyrighted Recordings also include certain of the sound recordings listed on Exhibit B which are owned by or exclusively licensed to one or more of the Plaintiffs or Plaintiffs' affiliate record labels, and which are subject to valid Certificates of Copyright Registration issued by the Register of Copyrights.

12. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings to the public.

13. Plaintiffs are informed and believe that Defendant, without the permission or consent of Plaintiffs, has used, and continues to use, an online media distribution system to download the Copyrighted Recordings, to distribute the Copyrighted Recordings to the public, and/or to make the Copyrighted Recordings available for distribution to others. In doing so, Defendant has violated Plaintiffs' exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and exclusive rights under copyright.

14. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on each respective album cover of each of the sound recordings identified in Exhibit A, Schedule 1, and Exhibit C. These notices of copyright appeared on published copies of each of the sound recordings identified in Exhibit A, Schedule 1, and Exhibit C. These published copies were widely available, and each of the published copies of the sound recordings identified in Exhibit A, Schedule 1, and Exhibit C was accessible by Defendant.

15. Plaintiffs are informed and believe that the foregoing acts of infringement have been willful and intentional, in disregard of and with indifference to the rights of Plaintiffs.

16. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

17. The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing Plaintiffs' copyrights, and ordering Defendant to destroy all copies of sound recordings made in violation of Plaintiffs' exclusive rights.

For these reasons, Plaintiffs pray for judgment against Defendant as follows:

1. For an injunction providing:

"Defendant shall be and hereby is enjoined from directly or indirectly infringing Plaintiffs' rights under federal or state law in the Copyrighted Recordings and any sound recording, whether now in existence or later created, that is owned or controlled by Plaintiffs (or any parent, subsidiary, or affiliate record label of Plaintiffs) ("Plaintiffs' Recordings"), including without limitation by using the Internet or any online media distribution system to reproduce (*i.e.*, download) any of Plaintiffs' Recordings, to distribute (*i.e.*, upload) any of Plaintiffs' Recordings, or to make any of Plaintiffs' Recordings available for distribution to the public, except pursuant to a lawful license or with the express authority of Plaintiffs. Defendant also shall destroy all copies of Plaintiffs' Recordings that Defendant has downloaded onto any computer hard drive or server without Plaintiffs' authorization and shall destroy all copies of those downloaded recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. Section 504.

3. For Plaintiffs' costs in this action.
4. For Plaintiffs' reasonable attorneys' fees incurred herein.
5. For such other and further relief, either at law or in equity, general or special, to which they may be entitled.

Respectfully submitted,

By: 

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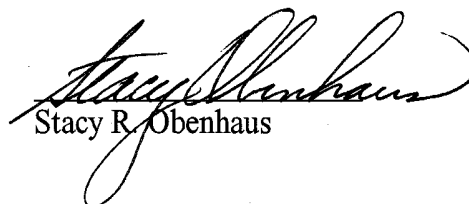
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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 5, 2008, a copy of the foregoing **SECOND AMENDED COMPLAINT** was served upon counsel for the Defendant via United States Mail as follows:

Donald Scott Mackenzie  
Attorney at Law  
9603 White Rock Trail, Suite 324  
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Stacy R. Obenhaus

**EXHIBIT A****WHITNEY HARPER**

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Maverick Recording Company	Michelle Branch	You Get Me	The Spirit Room	303-732
UMG Recordings, Inc.	Ja Rule	6 Feet Underground	Rule 3:36	270-080
Arista Records LLC	Avril Lavigne	I'm With You	Let Go	312-786
UMG Recordings, Inc.	Counting Crows	Hangin' Around	This Desert Life	271-316
Warner Bros. Records Inc.	Faith Hill	Just to Hear You Say That You Love Me	Faith	253-752
SONY BMG MUSIC ENTERTAINMENT	Indigo Girls	Closer to Fine	Indigo Girls	101-524

**EXHIBIT B**

*[Given the file size, please see Exhibit B to Plaintiffs' Complaint dated January 1, 2007 (Doc. No. 1), which is an exact copy of Exhibit B to Plaintiffs' Second Amended Complaint.]*



**SCHEDULE 1****HARPER, WHITNEY (WD TX)**

<b>Copyright Plaintiff</b>	<b>Artist</b>	<b>Song Title</b>	<b>Album Title</b>	<b>SR</b>
UMG Recordings, Inc.	Counting Crows	Mr. Jones	August and Everything After	172-267
UMG Recordings, Inc.	Vanessa Carlton	Ordinary Day	Be Not Nobody	313-943
Warner Bros. Records Inc.	Faith Hill	Beautiful	Cry	321-377
Warner Bros. Records Inc.	Madonna	Die Another Day	Die Another Day (single)	314-662
SONY BMG MUSIC ENTERTAINMENT	Good Charlotte	Little Things	Good Charlotte	288-305
UMG Recordings, Inc.	Counting Crows	American Girls	Hard Candy	321-021
SONY BMG MUSIC ENTERTAINMENT	Jessica Simpson	Sweetest Sin	In This Skin	378-700
SONY BMG MUSIC ENTERTAINMENT	Jennifer Lopez	I'm Real (duet w/ Ja Rule)	J. Lo	293-297
UMG Recordings, Inc.	Musiq	Dontchange	Juslisen	308-859
Arista Records LLC	Dido	White Flag	Life for Rent	340-392
SONY BMG MUSIC ENTERTAINMENT	John Mayer	Love Song for No One	Room for Squares	305-049
Warner Bros. Records Inc.	Fleetwood Mac	Dreams	Rumours	N39857
UMG Recordings, Inc.	The Police	Every Breath You Take	Synchronicity	44-862
SONY BMG MUSIC ENTERTAINMENT	Good Charlotte	Emotionaless	The Young and the Hopeless	309-099
SONY BMG MUSIC ENTERTAINMENT	Jennifer Lopez feat. Styles/Jadakiss	Jenny from the Block	This Is Me...Then	322-106
UMG Recordings, Inc.	Hanson	Save Me	This Time Around	280-547
UMG Recordings, Inc.	Diana Krall	Why Should I Care	Why Should I Care (single)	265-006

**EXHIBIT C****WHITNEY HARPER (WD TX)**

<b>Copyright Plaintiff</b>	<b>Artist</b>	<b>Song Title</b>	<b>Album Title</b>	<b>SR</b>
Arista Records LLC	Brooks & Dunn	Still in Love With You	Brand New Man	140-290
Arista Records LLC	Brooks & Dunn	She Used To Be Mine	Hard Workin' Man	168-005
Arista Records LLC	Brooks & Dunn	My Maria	Borderline	218-735
Arista Records LLC	Phil Vassar	Just Another Day in Paradise	Phil Vassar	284-145
UMG Recordings, Inc.	Vanessa Carlton	A Thousand Miles	A Thousand Miles (single)	306-656
UMG Recordings, Inc.	Vanessa Carlton	Ordinary Day	Be Not Nobody	313-943
SONY BMG MUSIC ENTERTAINMENT	Howie Day	Collide	Stop All The World Now	349-701
UMG Recordings, Inc.	The Killers	Mr. Brightside	Hot Fuss	355-962
Warner Bros. Records Inc.	Green Day	American Idiot	American Idiot	362-125
SONY BMG MUSIC ENTERTAINMENT	Destiny's Child	Cater 2 U	Destiny Fulfilled	363-786
UMG Recordings, Inc.	Gwen Stefani	Hollaback Girl	Love.Angel.Music.Baby.	364-759
UMG Recordings, Inc.	3 Doors Down	Let Me Go	Seventeen Days	368-870
UMG Recordings, Inc.	Lifhouse	You And Me	Lifhouse	370-643
UMG Recordings, Inc.	Mariah Carey	We Belong Together	The Emancipation of Mimi	370-795
SONY BMG MUSIC ENTERTAINMENT	Anna Nalick	In My Head	Wreck Of The Day	372-028
SONY BMG MUSIC ENTERTAINMENT	Frankie J	How To Deal	The One	377-949